STATE OF MICHIGAN

COURT OF APPEALS

GERTRUDE SZAKACS,

Plaintiff-Appellant,

v

BATTLE CREEK HEALTH SYSTEM,

Defendant-Appellee.

UNPUBLISHED
January 25, 2005

No. 250558
Calhoun Circuit Court
LC No. 02-003480-NI

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition in this premises liability case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was approaching the emergency entrance of defendant's facility when she slipped on snow and ice and fell to the ground, sustaining injuries. She filed suit alleging that defendant negligently failed to maintain the premises in a reasonably safe condition and to warn of the unsafe condition. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), concluding that defendant owed no duty to plaintiff because the condition was open and obvious, and that no special aspects made the condition unreasonably dangerous in spite of its open and obvious nature.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609-610; 537 NW2d 185 (1995).

The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Id*. at 612. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). If special aspects of a condition make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect an invitee from that risk. *Lugo v Ameritech Corp*, 464 Mich 512, 517-518; 629 NW2d 384 (2001). But where no such special aspects exist, the "openness and obviousness should prevail in barring liability." *Id.*

Plaintiff's reliance on *Quinlivan v Great Atlantic & Pacific Tea Co*, 395 Mich 244, 261; 235 NW2d 732 (1975), for the proposition that the open and obvious danger doctrine does not apply in cases involving an accumulation of snow and ice is misplaced. *Quinlivan, supra,* rejected the proposition that ice and snow are obvious hazards in all circumstances and cannot give rise to liability, but did not hold that the open and obvious danger doctrine is always inapplicable in cases involving snow and ice. As a general rule, and absent special circumstances, the hazards presented by snow and ice are open and obvious, and do not impose a duty on the property owner to warn of or remove the hazard. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 4-5, 8; 649 NW2d 392 (2002). The danger presented by snow-covered ice is open and obvious where the plaintiff knew of, and under the circumstances an average person with ordinary intelligence would have been able to discover, the condition and the risk it presented. *Joyce v Rubin*, 249 Mich App 231, 239; 642 NW2d 360 (2002). Here, plaintiff acknowledged that she was aware that snow and ice were on the ground. The fact that she did not see the particular ice on which she slipped was irrelevant. *Novotney, supra* at 475. The trial court correctly found that the danger presented by the presence of snow and ice on the grounds of defendant's facility was open and obvious.

Plaintiff failed to demonstrate the existence of any special aspects that made the condition unreasonably dangerous in spite of its open and obvious nature. Contrary to plaintiff's assertion, the danger presented by the presence of snow and ice in the area of defendant's emergency entrance was not unavoidable. Plaintiff could have alighted from her vehicle under the covered portion of the entrance. Some snow and ice existed in that area, but the condition was not so unreasonably dangerous that it created a risk of death or severe injury. Cf. *Lugo, supra* at 518; see also *Corey, supra* at 6-7 (falling several feet down ice-covered steps does not meet *Lugo* standard for unreasonable danger). Plaintiff's assertion that a question of fact existed as to whether the emergency entrance was unreasonably dangerous because it was safe to assume that all other entrances were in the same condition is without merit. Speculation and conjecture are insufficient to create a question of fact. *Detroit v General Motors Corp*, 233 Mich App 132, 139; 592 NW2d 732 (1998). The trial court properly granted summary disposition to defendant.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello